

SQUIRE, SANDERS & DEMPSEY L.L.P.
Eduardo G. Roy (State Bar # 146316)
Rodney R. Patula (State Bar # 182052)
Daniel T. Balmat (State Bar # 230504)
One Maritime Plaza, Suite 300
San Francisco, CA 94111-3492
Telephone: +1.415.954.0200
Facsimile: +1.415.393.9887

Attorneys for Plaintiff
SAN FRANCISCO BAY AREA RAPID TRANSIT
DISTRICT

MCINERNEY & DILLON, P.C.
Timothy L. McInerney (State Bar # 124807)
LeCarie S. Whitfield (State Bar # 192186)
One Kaiser Plaza, 18th Floor
Oakland, CA 94612-3610
Telephone: +1.510.465.7100
Facsimile: +1.510.465.8556

Attorneys for Defendants
WILLIAM D. SPENCER, F.W. SPENCER & SON,
INC., BRISBANE MECHANICAL CO., BRUCE R.
BONAR, and WILLIAM M. MCGAHAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT

**SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT**, a multi-county
rapid transit district established and
existing under the laws of California, for
itself and for and in the name of the people
of California,

Plaintiff,

vs.

WILLIAM D. SPENCER, an individual;
F.W. SPENCER & SON, INC., a
California corporation; **BRISBANE
MECHANICAL CO.**, a California
corporation; **WILLIAM M. MCGAHAN**,
an individual; **BRUCE R. BONAR**, an
individual; and **DOES 1-25**,

Defendants.

Case No. C 04 4632 SI

**STIPULATION AND [PROPOSED]
ORDER TO EXTEND TIME FOR
PLAINTIFF TO FILE A SECOND
AMENDED COMPLAINT**

STIPULATION

The parties, by and through their respective counsel, hereby agree and request that the deadline for Plaintiff to file its Second Amended Complaint (“SAC”), currently October 14, 2005, be extended by three weeks, to November 4, 2005. The parties believe that an extension of the deadline to file the SAC is desirable and necessary because it will afford BART sufficient time to prepare the SAC to comport with the Court’s Order of September 2, 2005 (the “Order”).

Pursuant to the Order, BART is in discussions to engage a public attorney to prosecute BART’s claims under Business & Professions Code § 17200 *et seq.* Not surprisingly, in light of the circumstances of this case, these discussions involve complicated issues of fact and law regarding the appropriate agency to prosecute this matter. The underlying violations occurred in Alameda, San Francisco, and San Mateo counties and, therefore, discussions are taking place with each county.

Timely discussions with each county have been hindered by the extensive travel schedule of Mr. Roy, lead counsel for BART. In the past six weeks Mr. Roy has been required to travel to Hong Kong, New York, Cleveland, and Los Angeles. As a result, BART’s discussions with the public attorneys simply cannot be concluded before the current deadline.

BART is seeking a three week extension of time because Mr. Roy has scheduled trips to New York, Washington D.C., and Los Angeles between October 16, and November 4, 2005. Mr. Roy has taken his future travel schedule into account upon setting the new deadline.

///

///

///

///

///

///

///

///

///

Therefore, the parties hereby stipulate and jointly request an order extending the deadline for Plaintiff to file its Second Amended Complaint from October 14, 2005 to November 4, 2005.

Dated: October 13, 2005

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: /s/ Eduardo G. Roy
Eduardo G. Roy

Attorneys for Plaintiff
SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

Dated: October 13, 2005

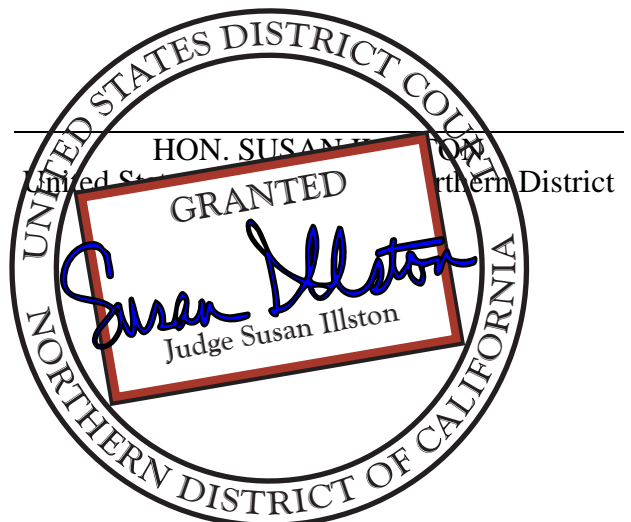
MCINERNEY & DILLON, P.C.

By: /s/ LeCarie S. Whitfield
LeCarie S. Whitfield

Attorneys for Defendants
WILLIAM D. SPENCER, F.W. SPENCER
& SON, INC., BRISBANE MECHANICAL
CO., BRUCE R. BONAR, and WILLIAM M.
MCGAHAN

IT IS SO ORDERED.

DATED: _____



PROOF OF SERVICE

(Pursuant to Federal Law)

The undersigned certifies and declares as follows:

I am a resident of the State of California and over 18 years of age and am not a party to this action. My business address is One Maritime Plaza, Suite 300, San Francisco, California 94111-3492, which is located in the county where any non-personal service described below took place.

On October 13, 2005, a copy of the following document(s):

STIPULATION AND [PROPOSED] ORDER TO EXTEND TIME FOR PLAINTIFF TO FILE A SECOND AMENDED COMPLAINT

was served on:

MCINERNEY & DILLON, P.C.
Timothy L. McInerney, Esq.
LeCarie S. Whitfield, Esq.
One Kaiser Plaza, 18th Floor
Oakland, CA 94612-3610

Service was accomplished as follows.

☒ **By U.S. Mail.** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice the mail would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Facsimile.** On the above date, I transmitted the above-mentioned document(s) by facsimile transmission machine to the parties noted above, whose facsimile transmission machine telephone number is set forth above.

☐ **By Express Service Carrier.** On the above date, I sealed the above document(s) in an envelope or package designated by Federal Express, an express service carrier, addressed to the above, and I deposited that sealed envelope or package in a box or other facility regularly maintained by the express service carrier, or delivered that envelope to an authorized courier or driver authorized by the express service carrier to receive documents, located in San Francisco, California with delivery fees paid or otherwise provided for.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on October 13, 2005, at San Francisco, California.

/s/ John R. Aguilar

JOHN R. AGUILAR